



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 28 2018

OFFICE OF
POLICY

Mr. Robert Faturechi
ProPublica
155 Avenue of the Americas
13th floor
New York, NY 10013

Re: Freedom of Information Act Request EPA-HQ-2017-002731; Final Response

Dear Mr. Faturechi:

This letter is in reference to your Freedom of Information Act (FOIA) request received by the U.S. Environmental Protection Agency (EPA or Agency) on January 10, 2017, in which you requested a copy of “all correspondence between the EPA Office of Associate General Counsel for the Air and Radiation Law Office or the Office of General Counsel and Myron Ebell, including but not limited to from these email addresses: myronebell.epateam@gmail.com and mebell@cei.org. All correspondence regarding the Clean Power Plan and other climate-related regulations between EPA officials and Myron Ebell, including but not limited to from these email addresses: myronebell.epateam@gmail.com and mebell@cei.org.” Your request was further clarified in a February 13, 2017, email to you from Victoria Clarke, of the FOIA Expert Assistance Team (FEAT) Office.¹ On February 27, 2017, you sent an email to Becky Dolph, Director of the FEAT Office, agreeing to the search terms as clarified in Ms. Clarke’s email.

I. Expedited Processing and Fee Waiver Requests

In your January 10, 2017, FOIA request letter, you requested a Fee Waiver and Expedited Processing. On January 12, 2017, EPA responded to your request, granting you expedited processing and indicating that because your request does not reach the minimum billable amount, there are no charges associated in processing it.

II. Determination of Freedom of Information Act Request EPA-HQ-2017-002731

Between September 2017 and January 2018, the EPA issued three interim releases of materials that may have been responsive to your request, each with the disposition of partial grant/partial denial:

¹ In the February 13, 2017 email, Ms. Clarke indicated that, based on a reading of your request, she and her FEAT colleague, Nicole Rementer, proposed the following search: Date range: 11/9/16 to the date of the search. Custodians: Lorie Schmidt, Assoc Gen Coun/Air & Radiation Law Office; Gautam Srinivasan, Dep. Assoc. Gen. Counsel/Air and Radiation Law Office; Avi Garbow, General Counsel (former); Ethan Shenkeman, Deputy General Counsel (former; his focus included air and radiation issues); Kevin Minoli, Principal Deputy General Counsel and current Acting General Counsel; Elise Packard, Acting Principal Deputy General Counsel; and Shannon Kenney, Director of the EPA Transition Team. Search Terms: (Clean Power Plan or CPP or Climate) and (myronebell.epateam@gmail.com or mebell@cei.org or [TO]“Myron w/3 Ebell” or [FROM]“Myron w/3 Ebell” or [CC]“Myron w/3Ebell”).

- On September 20, 2017, EPA released 1048 pages of records.
- On October 31, 2017, EPA released 1191 pages of records, with a gap in the numbering at 1061 through 1066, reflecting a document withheld in full.
- On January 8, 2018, EPA released 1583 pages of records.

Portions of all three of these aforementioned releases were withheld under three FOIA withholding exemptions. The first exemption EPA relied upon was 5 U.S.C. § 552(b)(5), the Deliberative Process Privilege. The information withheld pursuant to the Deliberative Process Privilege of Exemption 5 is exempt from disclosure under the FOIA because the information is pre-decisional and deliberative, and would harm agency decision making if released. The second exemption EPA relied upon was 5 U.S.C. §552(b)(6), Personal Privacy Information. EPA conducted a balancing test and concluded that disclosure of the personal information would be a clearly unwarranted invasion of personal privacy and any public interest in the information would not outweigh the harms to the privacy interest if disclosed. The third exemption EPA relied upon was 5 U.S.C. §552(b)(7)(F). The information withheld pursuant to Exemption 7(F) is exempt from disclosure because its release could reasonably be expected to endanger the life or physical safety of an individual.

In addition, several documents were withheld in full under one or more exemptions. The following is a brief description of these documents and the basis for withholding in full:

- Three copies each of three resumes of individual EPA employees, under Exemption 6 - personal privacy
- Two duplicates of an email chain less than one page in length, under Exemption 5 - deliberative process
- A chart of near-term decisions, under Exemption 5 - deliberative process
- A chart of upcoming external meetings, under Exemption 5 - deliberative process
- A memorandum on litigation trends, under Exemption 5 - deliberative process, attorney work product, and attorney-client privilege
- A briefing paper on "Enterprise Risk- Human Resources," under Exemption 5 - deliberative process
- A briefing paper on "Enterprise Risk - Acquisition," under Exemption 5 - deliberative process

The Agency has concluded its search for records responsive to your request. EPA closes out your request with the disposition of partial grant/partial denial. The cost to process your request was \$0.00.

III. Appeal Rights

This letter concludes our response to your request. You may appeal this response by email at hq.foia@epa.gov, or by mail to the National Freedom of Information Office, U.S. EPA, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, DC 20460 (U.S. Postal Service Only). Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue, N.W. If you are submitting your appeal via hand delivery, courier service, or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W., Room 6416J, Washington, DC 20001. Your appeal must be made in writing, and it must be received no later than 90 calendar days from the date of this letter. The Agency will not consider appeals received after the 90 calendar day limit. Appeals received after 5:00 pm EST will be considered received the next business day. The appeal letter should include the FOIA tracking number listed above. For quickest possible handling, the subject line

should include the FOIA tracking number listed above. For quickest possible handling, the subject line of your email, the appeal letter, and its envelope, if applicable, should be marked "Freedom of Information Act Appeal." Additionally, you may seek assistance from EPA's FOIA Public Liaison at hq.foia@epa.gov or (202) 566-1667, or from the Office of Government Information Services (OGIS). You may contact OGIS in any of the following ways: by mail, Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, MD 20740-6001; e-mail, ogis@nara.gov; telephone, (202) 741-5770 or 1-(877) 684-6448; and facsimile, (202) 741-5769.

If you have any questions concerning this response, please contact Andrew Teplitzky at (202) 566-2947 or teplitzky.andy@epa.gov.

Sincerely,

A handwritten signature in cursive script that reads "William Nickerson".

William Nickerson
Acting Director,
Office of Regulatory Policy and Management

